



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 220523-0119]

RTID 0648-XC282

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; General Category September Quota Transfer

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS is transferring 90.5 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the Reserve category to the General category. With this transfer, the adjusted General category September 2022 subquota is 225.5 mt. This action is intended to account for an accrued overharvest of 20.5 mt from previous time period subquotas and to provide further opportunities for General category fishermen to participate in the September General category fishery, based on consideration of the regulatory determination criteria regarding inseason adjustments. This action applies to Atlantic tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

DATES: Effective September 7, 2022, through September 30, 2022.

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SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries, including BFT fisheries, are managed under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27 divides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Atlantic HMS FMP and its amendments. NMFS is required under the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

The baseline General and Reserve category quotas are 587.9 mt and 31.2 mt, respectively. The General category baseline subquota is further suballocated to different time periods. Relevant to this action, the subquota for the September time period is 155.8 mt. To date for 2022, NMFS has published three actions that have resulted in adjustments to the General and Reserve category quotas, including the allowable carryover of underharvest from 2021 to 2022 (87 FR 5737, February 2, 2022; 87 FR 33049, June 1, 2022; 87 FR 43447, July 21, 2022). The current adjusted Reserve category quota is 276.7 mt.

Transfer of 90.5 mt from the Reserve Category to the General Category

Under § 635.27(a)(9), NMFS has the authority to transfer quota among fishing categories or subcategories after considering the determination criteria provided under § 635.27(a)(8). NMFS has considered all of the relevant determination criteria and their

applicability to this inseason quota transfer. These considerations include, but are not limited to, the following.

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(a)(8)(i)), biological samples collected from BFT landed by General category fishermen and provided by BFT dealers provide NMFS with valuable parts and data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Additional opportunity to land BFT in the General category would support the continued collection of a broad range of data for these studies and for stock monitoring purposes.

Regarding the likelihood of closure of the General category fishery if no adjustment is made (§ 635.27(a)(8)(ii) and (ix)), NMFS considered the catches and catch rates of the General category quota to date (including during the summer/fall and winter fisheries in the last several years). NMFS also took into consideration the final rule that set restricted-fishing days for the General Category through November 30, 2022 (87 FR 33056, June 1, 2022). To date, preliminary landings data indicate that the General category landed a cumulative total of 391.1 mt through August 31, which exceeds the cumulative adjusted quota available through August 31 (370.6 mt) by 20.5 mt. While the General category September time period subquota has not yet been exceeded, without a quota transfer at this time, based on catch rates in recent years in comparison to the available quota, NMFS anticipates it would likely need to close the General category fishery shortly. Once the fishery is closed, participants would have to stop BFT fishing activities even though commercial-sized BFT remain available in the areas where General category permitted vessels operate at this time of year. Transferring 90.5 mt of BFT quota from the Reserve category would account for the 20.5 mt ($391.1 \text{ mt} - 370.6 \text{ mt} = 20.5 \text{ mt}$) of accrued overharvest from the prior time periods and result in an additional 70 mt ($90.5 \text{ mt} - 20.5 \text{ mt} = 70 \text{ mt}$) being available for the September 2022

subquota time period, thus effectively providing limited additional opportunities to harvest the U.S. BFT quota while avoiding exceeding it.

Regarding the projected ability of the vessels fishing under the General category quota to harvest the additional amount of BFT quota transferred before the end of the fishing year (§ 635.27(a)(8)(iii)), NMFS considered General category landings over the last several years and landings to date this year. Landings are highly variable and depend on access to commercial-sized BFT and fishing conditions, among other factors. A portion of the transferred quota covers the 20.5 mt overharvest in the category to date, and NMFS anticipates that General category participants will be able to harvest the remaining 70 mt of transferred BFT quota by the end of the subquota time period. NMFS may adjust each time period's subquota based on overharvest or underharvest in the prior period and may transfer subquota from one time period to another time period. By allowing for such quota adjustments and transfers, NMFS anticipates that the General category quota would be used before the end of the fishing year. Thus, this quota transfer would allow fishermen to take advantage of the availability of BFT on the fishing grounds and provide a reasonable opportunity to harvest the available U.S. BFT quota.

NMFS also considered the estimated amounts by which quotas for other gear categories of the fishery might be exceeded (§ 635.27(a)(8)(iv)) and the ability to account for all 2022 landings and dead discards. In the last several years, total U.S. BFT landings have been below the available U.S. quota such that the United States has carried forward the maximum amount of underharvest allowed by ICCAT from one year to the next. NMFS recently took such an action to carryover the allowable 127.3 mt of underharvest from 2021 to 2022 (87 FR 33049, June 1, 2022). NMFS will need to account for 2022 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations, and anticipates having sufficient quota to do that.

NMFS also considered the effects of the adjustment on the BFT stock and the

effects of the transfer on accomplishing the objectives of the FMP (§ 635.27(a)(8)(v) and (vi)). This transfer would be consistent with established quotas and subquotas, which are implemented consistent with ICCAT recommendations (established in Recommendation 21-07), ATCA, and the objectives of the 2006 Consolidated HMS FMP and amendments. In establishing these quotas and subquotas and associated management measures, ICCAT and NMFS considered the best scientific information available, objectives for stock management and status, and effects on the stock. This quota transfer is in line with the established management measures and stock status determinations. Another principal consideration is the objective of providing opportunities to harvest the available General category quota without exceeding the annual quota, based on the objectives of the 2006 Consolidated HMS FMP and amendments, including to achieve optimum yield on a continuing basis and to optimize the ability of all permit categories to harvest available BFT quota allocations (related to § 635.27(a)(8)(x)). Specific to the General category, this includes providing opportunities equitably across all time periods.

Given these considerations, NMFS is transferring 90.5 mt of the available 276.7 mt of Reserve category quota to the General category. Of this amount, 20.5 mt accounts for preliminary overharvest of the January through March and June through August time period subquotas, and 70 mt is added to the September subquota to provide further opportunities for General category fishermen to participate in the September General category fishery. Therefore, NMFS adjusts the General category September 2022 subquota to 225.5 mt after accounting for the 20.5 mt of overharvest for the prior 2022 time periods and adjusts the Reserve category quota to 186.2 mt ($276.7 \text{ mt} - 90.5 \text{ mt} = 186.2 \text{ mt}$). The General category fishery will remain open until September 30, 2022, or until the adjusted General category quota is reached, whichever comes first.

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS' ability to timely implement actions such as quota and retention limit adjustments, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General category and HMS Charter/Headboat permitted vessel owners are required to report the catch of all BFT retained or discarded dead within 24 hours of the landing(s) or end of each trip, by accessing hmspermits.noaa.gov, by using the HMS Catch Reporting app, or calling 888-872-8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional adjustments are necessary to ensure available quota is not exceeded, or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at 978-281-9260, or access hmspermits.noaa.gov, for updates on quota monitoring and inseason adjustments.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act and regulations at 50 CFR part 635 and is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the

regional variations in the BFT fishery. Affording prior notice and opportunity for public comment on the quota transfer for the September 2022 time period is impracticable. The General category fishery is underway, there was an exceedance of the August subquota, and while the September subquota has not yet been exceeded, NMFS anticipates that it will likely need to close the General category soon. Thus, NMFS needs to take this quota transfer action quickly. Delaying the action is contrary to the public interest, not only because it would likely result in a General category closure and associated costs to the fishery, but also administrative costs due to further agency action needed to re-open the fishery after quota is transferred. The delay would preclude the fishery from harvesting BFT that are available on the fishing grounds and that might otherwise become unavailable during a delay. This action does not raise conservation and management concerns. Transferring quota from the Reserve category to the General category does not affect the overall U.S. BFT quota, and available data show the adjustment would have a minimal risk of exceeding the ICCAT-allocated quota. NMFS notes that the public had an opportunity to comment on the underlying rulemakings that established the U.S. BFT quota and the inseason adjustment criteria. Therefore, the AA finds good cause under 5 U.S.C. 533(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, there is good cause under 5 U.S.C. 5523(d) to waive the 30-day delay in effectiveness.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: September 2, 2022.

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